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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the California Renewables Portfolio Standard Program.	))))	Rulemaking 04-04-026 (Filed April 22, 2004)

COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON PROPOSED DECISION

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Dated: October 22, 2007

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In accordance with Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Southern California Edison Company ("SCE") respectfully submits these comments on the Proposed Decision ("PD") of Administrative Law Judge Burton W. Mattson, mailed October 1, 2007.

I.

INTRODUCTION

The PD makes great strides in providing the level of flexibility needed by renewable developers and the investor owned utilities ("IOUs") in contracting for renewable energy needed to help reach the State's renewables portfolio standard ("RPS") goals. However, more flexibility is needed to accommodate an increasingly diverse marketplace. Specifically, the PD should be modified as follows:

- The flexibility needed to modify the Eligibility term is needed to address the legitimate business concerns of RPS developers related to changes in RPS law that occur after an RPS agreement has been executed.
- The PD incorrectly assumes that the standard Assignment language provides the best protection for the IOUs' customers. Under the realties of RPS contract

performance, allowing the flexibility to modify the standard term will, in the end, provide greater protection to the IOUs' customers.

- The PD should be modified to eliminate the requirement that the seller and buyer must submit a verification stating that the all changes to the standard terms are non-substantive.

II.

THE PD GOES A LONG WAY TOWARDS GRANTING MUCH NEEDED FLEXIBILITY IN RPS CONTRACTING AND SHOULD GRANT FURTHER FLEXIBILITY IN CONNECTION WITH THE STANDARD ASSIGNMENT AND ELIGIBILITY TERMS

As stated in SCE's and Pacific Gas and Electric Company's ("PG&E") Amended Petition for Modification of D.04-06-014:

> RPS contracting experience to date has shown that a non-negotiable, cookie-cutter approach to standard terms and conditions, with the exception of only the most essential definitions requiring uniformity, does not serve RPS goals well. Rigid provisions simply do not neatly fit the increasingly diverse technology, project, and financing needs of otherwise-viable renewable energy projects.

To a large degree, the PD has addressed many of the problems that are posed by the rigid application of standard terms and conditions by reducing the number of standard terms, and allowing the modification of "modifiable" standard terms through the IOUs' annual RPS procurement plan. These changes will go a long way towards allowing parties to resolve unique problems that they may face in their contract discussions.

The PD, however, should be modified in two important respects in order to ensure the flexibility needed by renewable developers and the IOUs to execute as many RPS agreements as needed, and in a timely fashion. Specifically, the PD should be modified to allow parties to modify the standard Eligibility and Assignment terms. First, with respect to the Eligibility term, flexibility to modify this term is needed to address the legitimate business concerns of RPS

developers related to changes in RPS law that occur after an RPS agreement has been executed. Also, with respect to the Assignment term, the PD incorrectly assumes that the standard language provides the best protection for the IOUs' customers. As discussed in more detail below, under the realties of RPS contract performance, allowing the flexibility to modify the standard term will, in the end, provide greater protection to the IOUs' customers.

SCE views these changes as vital to its ability to enter into RPS contracts in the future. Allowing these terms to be modifiable would be beneficial to renewable developers as well as the IOUs' customers. More importantly, the modifications are needed to reflect the commercial realities of RPS contracts as they exist today. It makes little sense to tie down developers and the IOUs to contract terms that, by definition, are unable to evolve under the complex and fast changing renewable market. Without these changes, there is a strong possibility that contracting opportunities could be lost. Thus, the Commission should make every effort not to limit developers and the IOUs from entering into commercially reasonable RPS agreements.

A. The RPS Eligibility Term Should Be A Standard "Modifiable" Term

As the PD recognizes, requiring an RPS seller to maintain and warrant the RPS Eligibility of their output is an important term of any RPS agreement.[1] Based on this premise, the PD concludes that the standard Eligibility term should not be modifiable, finding that there is no great need for flexibility for this term.[2] While the Eligibility term is important, SCE has found that a legitimate business concern for RPS developers has arisen that requires flexibility with the Eligibility term. Without such flexibility, the standard term may hinder parties from entering into RPS agreements.

The standard Eligibility term provided in the PD requires the potential seller to represent and warrant throughout the term of the agreement that the generating facility qualifies, and is certified by the California Energy Commission ("CEC"), as an eligible renewable energy

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[1] *See* PD at 16.
[2] *See id.*

resource, and in the event of changes in law continues to be certified by the CEC, and that the output from the generating facility qualifies for RPS purposes.[3] In SCE's experience, while almost all potential sellers are willing to make representations and warranties regarding RPS eligibility, many potential sellers insist that such representations and warranties be based solely upon the RPS statute, implementing regulations, and Commission orders, as they exist on the date on which the contract is signed. Potential sellers are frequently unwilling to take the risk of unknown post-signing changes in the RPS law that are completely out of their control because these risks are neither quantified nor qualified at the time at which they enter into the contract, and, therefore, cannot be included in the financial analysis of the project and the subsequent structure and negotiation of the transaction.

In order to address this valid business concern and the need to ensure that SCE enters into contracts that continue to provide long-term benefits to SCE's customers, parties frequently modify the language to require that the project maintain its RPS eligibility throughout the contract term based upon the eligibility standards in effect on execution, and make "commercially reasonable" efforts thereafter to ensure compliance based upon any post-execution changes in the compliance standards. "Commercially reasonable" is typically defined to mean that the project will not be required to incur out-of-pocket costs in excess of a certain dollar amount per calendar year in order to be in compliance under any revised RPS law. This amount can vary depending upon a number of factors, including the size and characteristics of the generating facility. For example, SCE's standard offer contract for biomass facilities limits the amount of out-of-pocket expenses to $10,000 per calendar year, which SCE believes is an appropriate threshold for projects of the size and nature eligible for this particular program.[4]

This compromise can reduce the risk profile of the project for a seller, its owners and potential investors and creditors, which in turn benefits SCE's customers in three significant ways. First, a transaction may be more "financeable" due to quantifiable and reasonably capped

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[3] *See id.*, Attachment A, at 2.

[4] *See* SCE's standard offer contract for biomass facilities (http://www.sce.com/EnergyProcurement/bsc.htm).

costs associated with future RPS compliance. The more "financeable" a project becomes, the more likely a seller of renewable power may enter into a transaction with SCE. Second, the risk of unquantifiable changes to RPS compliance need not be priced into the transaction, which in turn may ultimately lead to lower prices paid by SCE's customers for renewable energy. Finally, by creating known and reasonable limits on the amount of money that a seller is required to pay due to changes in RPS law, it becomes more likely that a seller will live up to their contractual obligations.

Accordingly, by allowing the Eligibility term to be modifiable, the Commission will ensure that the flexibility is given to RPS developers and the IOUs to craft RPS agreements that address the legitimate business concern of potential future changes in RPS law, which cannot be quantified or qualified at the time the parties enter into the agreement.

B. The Assignment Term Should Be A Standard "Modifiable" Term

The PD maintains that the standard Assignment term ensures that a potential assignment of an RPS agreement will require lenders to be bound by the agreement, including the assumptions of payment and performance obligations thereunder.[5] Based on this assumption, the PD concludes that a modification to the standard term will result in reducing risk to lenders in exchange for increased risk to the IOUs' customers.[6] Unfortunately, the PD's assumptions and conclusions ignore the realities of RPS contracting, and, in fact, may result in harm to the IOUs' customers.

The standard Assignment term states that the power purchase contract may not be assigned by a party without the prior written consent of the other party, which consent may not be unreasonably withheld. SCE has no issues with this provision and it is incorporated into its *pro forma* contract.[7]

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[5] *See* PD at 17.

[6] *See id.*

[7] A comparison of the standard Assignment term to the term proposed by SCE in its 2008 *pro forma* is provided in Appendix 1.

Additionally, the standard Assignment term provides that the contract may be pledged, assigned or sold to a financing entity without the other party's consent, and the financing entity shall assume the transferor's payment and performance obligations under the contract. The standard Assignment term does not specify *when* the financing entity must assume the transferor's payment and performance obligations, and whether it must assume all of the transferor's monetary or non-monetary obligations, including obligations arising before the date of such assignment. SCE's *pro forma* contract also provides for assignment to a financing entity, but contains significantly more detail regarding the terms of such a permitted assignment. As explained below, this additional detail provides benefits to SCE's customers.

Most financing entities for a new (both renewable and conventional generation facilities) power project will require the developer to assign its power purchase contract as security for the financing. The assignment will typically be in a "contingent" form (*i.e.*, not a present assignment of the contract, since the lender has no need to step into the seller's shoes at the outset of a loan), but, instead, an assignment to be effected at the lender's *option* in the event of a foreclosure or other default under the loan agreement. It is this option to assign the agreement that belies the PD's determination that the standard Assignment term will ensure that the lender is bound by the original agreement, including all payments and performance obligations. In addition, to the extent the standard Assignment term would be interpreted as requiring the lender to assume the seller's payment and performance obligations under the contract at the time of this contingent assignment, it is highly unlikely that any lender will agree to do so, regardless of whether the seller accepts the standard Assignment provision at the time the contract is executed.

Moreover, as a condition to its project financing, the lender will also typically require the utility buyer to execute a consent to assignment which details the terms of the contingent assignment and the lender's rights and responsibilities in respect of the same. Such consents typically address, among other things, the lender's right to receive notice of and an opportunity to cure defaults by the seller, the buyer's agreement to delay exercising its rights arising from such defaults (e.g., terminating the contract) while the lender seeks to cure them, and the contract

obligations that the lender or other assignee must assume when the lender exercises its contingent assignment rights. In this regard, many lenders will seek to avoid responsibility for seller's defaults arising before the exercise of contingent assignment rights. Similarly, many lenders will seek to preserve the option of *not* exercising contingent assignments rights if, for example, power prices at the time of the default exceed the prices negotiated in the contract. In SCE's experience, a lender will require a satisfactory consent to assignment as a condition to its financing, and *no lender* will agree simply to assume the seller's payment and performance obligations under the power purchase contract in all instances without qualification.

SCE believes that, to the extent that other buyers state that they can "live with" the standard Assignment term without modification, they are, in essence, stating that they are willing to postpone the negotiations regarding the terms of the contingent assignment and the buyer's consent thereto to the time of the financing. A developer typically has not secured its financing arrangements at the time it enters into the power purchase contract, as the execution and Commission approval of the contract would ordinarily be a necessary condition for financing a renewable project. Thus, these negotiations will often occur substantially after the contract is executed and approved by the Commission. Presumably, other buyers believe they can agree to typical contingent assignment terms without a formal amendment to the power purchase contract that must be submitted for Commission approval, on the theory that such terms are simply a "commercially reasonable" elaboration of the conditions under which the lender will agree to "assume the payment and performance obligations provided under" the contract, as required by the standard Assignment term. SCE submits that its approach to negotiating such terms advances the interests of its customers.

SCE's *pro forma* contract embodies a preference to anticipate the complexity of such financing negotiations at the time of contract execution, rather than delay such negotiations to a later time, by giving seller and its potential lenders clear directions regarding the rights SCE is willing to give them, and the obligations SCE is expecting of them in return. For example, SCE's Consent to Collateral Assignment contains specific provisions regarding a lender's rights

and obligations in the event of a default by the seller.[8] While these provisions could conceivably be negotiated at the time the developer is negotiating the financing for its project, SCE's experience is that its leverage with the seller is significantly stronger at the time the contract is executed than at the time of a proposed financing, and that including such terms in the contract facilitates the financing negotiations by making it more difficult for the seller or lender to argue that such terms are unexpected or not commercially reasonable. SCE typically includes its Consent to Collateral Assignment term in its contracts for new conventional generation, as well as its contracts for new renewable projects.

Finally, the PD states that the Assignment term is derived from the Edison Electric Institute ("EEI") standard contract. The EEI agreement, however, is designed to be modified, and, in SCE's experience is routinely modified to reflect the unique terms of individual transactions. Thus, SCE does not advocate that its "Consent to Collateral Assignment" term be made mandatory, but believes that the Commission's Assignment term, like the terms of an EEI agreement, should be made modifiable, giving SCE (and other buyers) the flexibility to include such additional language because of the benefit that such language provides to its customers. In the end, the Commission, of course, retains the ability, as part of the contract approval process, to reject a contract if it believes that the Consent to Collateral Assignment clause, or any other contract provision, presents unacceptable customer risk.

In summary, designating the standard Assignment term as "non-modifiable" does not benefit the IOUs' customers in that the IOUs' lose leverage in their ability to negotiate consent to collateral agreements with developers and their potential lenders. Furthermore, because all lenders have the *option* to effect an assignment, the PD incorrectly concludes that a lender will automatically be bound by the terms of the RPS agreement under the standard term. By allowing the term to be modifiable, the Commission ensures that the IOUs are in a better position to

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[8] S*ee* Consent To Collateral Assignment, paragraphs (a), (b) and (c), its *obligation* to cure defaults arising before it assumes the contract (paragraph (f)), and its *obligation* to assume the contract, or enter into a substantially similar contract, upon the exercise of other remedies (such as foreclosure or bankruptcy (paragraphs (f)-(h)).

negotiate the terms of a consent to collateral agreement. It is this flexibility that creates more benefit for the IOUs customers than the insistence on the use of the standard Assignment term language.

III.

THE VERIFICATION REQUIREMENT FOR MODIFICATIONS TO THE STANDARD TERMS SHOULD BE ELIMINATED

The PD would require that if a standard term is modified, the IOU must submit a verification affirming that all the changes are non-substantive along with the advice letter seeking approval of the contract.[9] This new requirement should be eliminated because it provides no additional benefit to the RPS program.

Pursuant to Rule 1.1 of the Commission Rules of Practice and Procedure the IOUs are already forbidden from providing information to the Commission that is false or misleading. The RPS contract approval template developed by the Energy Division requires that the IOUs identify any changes to the standard terms and state whether these changes are substantive. The Commission rule and the RPS contract approval template already provide enough assurance that all substantive modifications to the standard terms will be identified in a filing. Creating an additional requirement of verifying these statements would be redundant and would provide no additional benefit to the RPS program.

Moreover, SCE does not see any benefit in having the IOUs and their counterparties verify statements that are simply unverifiable. Whether a change to a standard term is substantive is purely a question of law. Any attestation to whether a substantive change has been made would be subject to legal interpretation, which could never be confirmed or refuted by the Commission or the IOUs. Indeed, even if the Commission disagreed with the IOUs as to whether a substantive change has been made, the verifying individual still would not have

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[9] *See* PD at 23.

committed perjury if they believed that the statement was true. In effect, the verification would be a statement without meaning. Thus, the Commission should eliminate the requirement.

Finally, it is unknown, and the PD provides no rationale, as to why the requirement must be applicable to sellers as well as the IOUs. Requiring the IOUs to obtain verifications from their counterparties will only prolong the already lengthy process of preparing advice letters for approval of RPS contracts in that it is likely that the IOUs will have to devote significant time in preparing and explaining the purpose of these verifications to its counterparties. As such, SCE suggests that, if the requirement is not eliminated, the verification requirement only be applicable to the buyer. This would allow the Commission to retain the importance it believes exists in having the verification, while not making the approval process more time consuming.

IV.

CONCLUSION

Based on all of the foregoing reasons, the PD should be modified as set forth herein.

Respectfully submitted,

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Dated: October 22, 2007

Appendix 1

Standard Terms and Conditions	SCE's 2008 Pro Forma Agreement	Comparison of CPUC Standard Terms to SCE's 2008 Pro Forma Agreement
(16) Assignment (May not be modified)	**(16) Assignment**	**(16) Assignment**
Section 10.5 of the EEI Agreement, "Assignment," shall be deleted in its entirety and replaced with the following: "Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request."	10.04 Assignment. (a) Except as provided in Section 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. (b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld. 10.05 Consent to Collateral Assignment. Subject to the provisions of this Section 10.05, Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility. In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among	10.04 ~~"~~Assignment. (a) Except as provided in Section 10.05, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld~~; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request."~~. (b) Any direct or indirect change of control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld. 10.05 Consent to Collateral Assignment.

Standard Terms and Conditions	SCE's 2008 Pro Forma Agreement	Comparison of CPUC Standard Terms to SCE's 2008 Pro Forma Agreement
(16) Assignment (May not be modified)	**(16) Assignment**	**(16) Assignment**
	others, the following provisions: (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of such Event of Default; (b) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning: (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default; (ii) Impediments to the cure plan or its development; (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan. Seller or Lender shall provide the report to	Subject to the provisions of this Section 10.05, Seller shall have the right to assign this Agreement as collateral for any financing or refinancing of the Generating Facility. In connection with any financing or refinancing of the Generating Facility by Seller, SCE shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). The Collateral Assignment Agreement shall be in form and substance agreed to by SCE, Seller and Lender, and shall include, among others, the following provisions: (a) SCE shall give Notice of an Event of Default by Seller, to the person(s) to be specified by Lender in the Collateral Assignment Agreement, prior to exercising its right to terminate this Agreement as a result of such Event of Default; (b) Following an Event of Default by Seller under this Agreement, SCE may require Seller or Lender to provide to SCE a report concerning: (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

Standard Terms and Conditions	SCE's 2008 Pro Forma Agreement	Comparison of CPUC Standard Terms to SCE's 2008 Pro Forma Agreement
(16) Assignment (May not be modified)	**(16) Assignment**	**(16) Assignment**
	SCE within ten (10) Business Days after Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured; (c) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement; *provided that*, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days; (d) Lender shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default; (e) Lender shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned; (f) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of	(ii) Impediments to the cure plan or its development; (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and (iv) Any other information which SCE may reasonably require related to the development, implementation and timetable of the cure plan. Seller or Lender shall provide the report to SCE within ten (10) Business Days after Notice from SCE requesting the report. SCE shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured; (c) Lender shall have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to SCE prior to the end of any cure period indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement; *provided that*, such cure period may, in SCE's sole discretion, be extended by no more than an additional one hundred eighty (180) days;

Standard Terms and Conditions	SCE's 2008 Pro Forma Agreement	Comparison of CPUC Standard Terms to SCE's 2008 Pro Forma Agreement
(16) Assignment (May not be modified)	**(16) Assignment**	**(16) Assignment**
	Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement); *provided that*, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date; *provided, however*, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either: (i) Cause such Event of Default to be cured, or (ii) Not assume this Agreement. (g) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third	(d) Lender shall have the right to consent prior to any termination of this Agreement which does not arise out of an Event of Default; (e) Lender shall receive prior Notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned; (f) In the event Lender, directly or indirectly, takes possession of, or title to the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, SCE and Lender as set forth in the Collateral Assignment Agreement); *provided that*, Lender shall have no personal liability for any monetary obligations of Seller under this Agreement which are due and owing to SCE as of the assumption date; *provided, however*, that prior to such assumption, if SCE advises Lender that SCE will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise

Standard Terms and Conditions	SCE's 2008 Pro Forma Agreement	Comparison of CPUC Standard Terms to SCE's 2008 Pro Forma Agreement
(16) Assignment (May not be modified)	**(16) Assignment**	**(16) Assignment**
	party is the buyer, or otherwise), *then* Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity with financial qualifications (including collateral support and any other additional security as may be required by SCE) and operating experience equivalent to that of Seller as of the Effective Date satisfactory to SCE in its sole discretion; and (h) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's judgment, materially impact	by SCE (in its sole discretion) of SCE's right to terminate this Agreement with respect to such Event of Default, *then* Lender at its option; and in its sole discretion, may elect to either: (i) Cause such Event of Default to be cured, or (ii) Not assume this Agreement. (g) If Lender elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes possession of, or title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), *then* Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity with financial qualifications (including collateral support and any other additional security as may be required by SCE) and operating experience equivalent to that of Seller as of the Effective Date satisfactory to SCE in its sole discretion; and (h) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated

Standard Terms and Conditions	SCE's 2008 Pro Forma Agreement	Comparison of CPUC Standard Terms to SCE's 2008 Pro Forma Agreement
(16) Assignment (May not be modified)	**(16) Assignment**	**(16) Assignment**
	the rights or obligations of SCE under such an agreement.	in connection therewith and if Lender or its designee, directly or indirectly, takes possession of, or title to, the Generating Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender shall or shall cause its designee to promptly enter into a new agreement with SCE having substantially the same terms as this Agreement. Notwithstanding the foregoing, SCE shall not be required to enter into such agreement with Lender or such designee if there has been a change in circumstances resulting from actions of Seller in its Bankruptcy case that would, in SCE's judgment, materially impact the rights or obligations of SCE under such an agreement.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON PROPOSED DECISION** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this 22nd day of October, 2007, at Rosemead, California.

/s/ Sara Carrillo

Sara Carrillo

SOUTHERN CALIFORNIA EDISON COMPANY

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